

# HAWAII CONDOMINIUM



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## SUMMARY OF MEDIATION PROGRAM

FISCAL YEAR 1991-1992

This article is excerpted and adapted from a report prepared for the 1993 Legislature by the Hawaii Real Estate Commission on the condominium property regime and the Condominium Management Education Fund.

As part of a continuous program, the Neighborhood Justice Center (NJC) has been providing conciliation, mediation and training services for the Real Estate Commission (Commission). The services help resolve disputes arising out of the condominium law, Hawaii Revised Statutes, Chapter 514A and Hawaii Administrative Rules Title 16, Chapter 107. The Commission subsidizes the cost of mediation — participants pay only a one-time fee of ten dollars. The low cost presents mediation as a more attractive alternative than litigation. Funds for the program come out of the Condominium Management Education Fund.

Those eligible to participate in the mediation program are condominium owners; tenants; officers, directors and boards of directors; employees of associations; and condominium managing agents registered with the Commission pursuant to §514A-95, Hawaii Revised Statutes. All participants must be affiliated with condominium associations properly registered with the Commission.

If necessary, the Neighborhood Justice Center is able to provide mediation services on the Neighbor Islands. In November 1991, the Neighborhood Justice Center trained Mediation Services of Maui, Inc. to mediate condominium disputes.

From August 21, 1991 to August 30, 1992, the Neighborhood Justice

Center reports as follows:

39	Total cases received by intake
3	Total cases conciliated (agreement reached without mediation).
14	Total cases mediated.
7	Mediated cases with agreement reached by parties.
7	Mediated cases with no agreement reached by parties.
22	Total cases closed (request for mediation withdrawn or problem resolved without Neighborhood Justice Center assistance).

*continued on pg. 7, see Mediation*

**Do you have a condominium problem?  
Mediation may be the solution.  
For more information turn to page 7**

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## Letter from the Vice Chair. . .

Dear Condominium Owners:

At its 11th Planning and Budget Symposium on June 3, 1993, the Real Estate Commission gained many useful insights from condominium owners, association directors, real estate licensees and others involved in the real estate profession. I am pleased to inform you that, based on a suggestion at the symposium, each registered association will now be sent six copies (formerly only two were sent) of the Hawaii Condominium Bulletin. As a result, more directors should be able to read the bulletin in a more timely fashion. With your extra four copies, we expect you will be able to post one on a bulletin board, in the elevator, or in your common area. The cost of the bulletin is paid by the Condominium Management Education Fund.

As this issue goes to press, the governor has recently completed signing or vetoing bills passed by the Legislature. Please read the legislative summary to see how statutory changes may affect the operation of your condominium association.

One final note: On occasion, the Commission seeks comments from the public, especially from individuals experienced or knowledgeable in technical areas relating to condominium management. Participation typically involves review of a draft of a report and submission of comments. If you wish to volunteer, please write to the Real Estate Commission, 250 South King ST, Room 702, Honolulu, Hawaii, 96813, and describe your area of expertise. Participation will be on a rotating basis, depending on the needs of the Commission. The more input we have from the public, the better we can serve you.

Please feel free to write to or call (586-2646 or from the Neighbor Islands, 1 800 468-4644, extension 6-2646) the Commission's condominium specialists.

Very truly yours,

Carol Mon Lee, Vice Chair,  
Condominium and  
Cooperative Review Committee

## Ask the Condominium Specialists

**Q.** Several months ago, my car was damaged while parked in my parking stall on the premises of my condominium association. I tried to file an insurance claim against the association but the manager said the association had no insurance that applied to my situation.

**A.** When an apartment owner asks if the association is responsible for property loss sustained by an owner, the question usually involves two issues: who is responsible and who pays.

**Who is responsible?** An association may or may not be liable for property damage on the common elements. It depends on the specific circumstances such as the source or cause of the damage, previous occurrences, status of the person who caused the damage, and whether the damage was intentional or accidental.

**Who pays?** Insurance coverage also depends on the specific circumstances. Some losses may not be covered.

Associations are required to insure against fire and, if in a flood hazard area, against floods. In addition, an association may choose (or its declaration or bylaws may require it) to have insurance for other risks, such as exterior glass, directors and officers' liability, or comprehensive general liability.

In this case it appears that the association does not have insurance to cover the situation. Check if your own homeowners' insurance policy or automobile policy would cover your damage.

This situation should remind each apartment owner to review individual needs for securing insurance to cover personal property as well as for the apartment and its contents (sometimes called an HO-6 policy).

You may have heard that homeowners' insurance is more difficult to obtain as a result of Hurricane Iniki. In response to recent changes in the insurance industry, the Hawaii Property Insurance Association is now providing homeowners' insurance and legislation has been enacted to allow for creation of a hurricane insurance fund.

For more information about meeting insurance needs, your insurance agent should be consulted.

# Selected 1993 Legislative Acts Affecting Condominium Owners and Boards

*The discussion of selected 1993 Acts in this section of the **Hawaii Condominium Bulletin** is not and should not be construed as legal advice. Because this article summarizes<sup>1</sup> only some of the changes made by the 1993 Acts, readers are advised to obtain and read the full text of the Acts. They are also advised to seek the services of competent professionals should they need answers as to how the new law may apply to their particular circumstance.*

REFERENCE FILE

## Legislation Relating To Condominium Governance

### Act 155

#### Relating to Condominiums; Leases, Minutes, (H.B. 25, HD1, SD1, CD1)

Prior to the enactment of Act 155, the law relating to board minutes simply required that the recorded vote of each board member, except motions voted in executive session, be included in the minutes of meetings of the board of directors and of the association of apartment owners. Act 155 provides for additional requirements relating to minutes.

Specifically, Act 155 requires that the:

- Minutes of meetings of the association of apartment owners be approved at the next succeeding meeting; provided that minutes of the meetings for the board of directors be approved no later than the second succeeding meeting;
- Unapproved drafts of all minutes be made available within 60 days after the meeting;
- Approved minutes of all meetings be made available within 7 calendar days after approval;
- Withholding of minutes of executive sessions if their publication would defeat the lawful purpose of the executive session.

Other requirements of Act 155 provide that:

- If the documents creating a leasehold inter-

est in land under a condominium project provide that if the project is acquired by eminent domain, that the apartment owner shall not be entitled to damages from the lessor, and that compensation for the taking of the land shall go to the lessor, and for the improvements, to the apartment owners; and if not more than five percent of the land to the apartment owners; and if not more than five percent of the total land of the project is condemned;

- Then the lessor and the declarant shall file an amendment to the declaration to reflect any acquisition or right to possession (circumstances affecting acquisition or right to possession are specifically set out). (Effective 6-9-93.)

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## Legislation Affecting Condominium Ownership

### Act 217

#### Relating to Condominiums, Sales To Owner-Occupants, (S.B. 819, SD1, HD1, CD1)

The developer of any project containing residential units must designate at least 50% of such units for sale to prospective owner-occupants. Act 217 amends provisions to enforce the condominium owner-occupant requirements.

Specifically, Act 217:

- Amends condominium property regime law by requiring that the affidavit of intent to become an owner-occupant expire before the

1. Summaries have been excerpted from *Digest of Bills Passed by the Seventeenth Legislature Regular Session of 1993*, Legislative Reference Bureau. Where applicable, summaries have been edited for ease of reading.

end of the period (365 consecutive days from the recordation of the instrument conveying the apartment to the affiant), upon acquisition of title to the property by an institutional lender or investor through mortgage foreclosure, foreclosure under power of sale, or a conveyance in lieu of foreclosure;

- Requires any prospective owner-occupant who executes an affidavit for the sale of one of the designated residential units to reaffirm the person's intent to be an owner-occupant no earlier than the person's receipt for a final public report and no later than closing of escrow for the unit;
- Allows the developer to provide in its sales contract that failure to sign the reaffirmation upon reasonable request shall constitute a default under the sales contract by the person failing to sign;
- Requires the developer to cancel the sales contract or reservation of any person failing to reaffirm who is required to do so;
- Makes technical non-substantive amendments to the requirement that the developer re-offer the residential unit first to those owner-occupants whose names have not been removed from the final reservation list, who have not executed a sales contract for a residential unit in the project, in the order in which their names appear on the final reservation list. Provides that if the sales contract has become binding upon the purchaser, the developer may exercise the remedies reserved in the sales contract and all other remedies provided by law (previously the developer could retain up to 5% of the purchaser's deposit or the actual damages);
- Requires the developer to mail twice to each owner-occupant by registered or certified mail, once by the 60th day and once by the 270th day following the conveyance of the first unit

to an owner-occupant listed on the final reservation list, a complete copy of the executed affidavit to inform them of their legal obligations and penalties;

- Provides that the developer's failure to give the required notice does not affect title to the owner-occupant unit or the obligations of the owner of the owner-occupant pursuant to these provisions. (Effective 6-10-93.)

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### **Act 18**

#### **Relating to Recording, (H.B. 1668, HD1)**

Act 18 amends chapters 501 and 514A and clarifies the issuance and recordation process of certificates for two or more registered owners with regards to the conveyance of a fee simple interest in registered land; the recordation process for certificate regarding interest in registered land less than a fee simple estate; specifies when a new certificate of title shall be entered; mandates that a court judgment affecting title may be recorded but court judgments entered in lieu of directing a conveyance as any instrument that gives effect to the judgment must be recorded; and clarifies the recordation process for a certificate of merger as well as identifies what shall be contained in the certificate of merger.

Act 18 specifically:

- Amends provision relating to certificates under land court registration law by requiring that, where two or more persons are registered owners under any tenancy, one certificate be issued for the whole land. Requires any conveyance of the fee simple interest in registered land shall be recorded with the assistant registrar, who shall note the same on the certificate, cancel all the certificates affecting the whole land, and issue a new certificate to reflect all the owners of the whole land. Requires that all interests in registered land less than an estate in fee simple shall contain a reference to the document number of the interest acquired.

Allows new certificates of title to be entered for the following additional grounds: the recording of a certificate of merger that merges two or more condominium projects; or upon the recording of an amendment to a declaration of condominium property regime which alters the percentage interest of the respective apartment owners in the common elements.

Requires the assistant registrar to cancel all existing certificates of title for the apartments in the fee simple condominium projects being merged and issue new certificates of title for the apartments in the merged project, covering all of the land of the merged condominium project. Establishes criteria for recording certificates of merger for condominiums, which shall at least set forth all the apartments of the merged condominium projects, their new undivided interest, in the land, and their current certificate of title numbers in the common elements of the merged condominium projects. (Effective 4-13-93.)

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**Act 124**  
**Relating To Vexatious Litigants,**  
**(S.B. 1584, SD1, HD1)**

Act 124 was enacted to prevent the filing of bad faith litigation.

Specifically, Act 124:

- Defines "vexatious litigant." Permits a defendant to move for an order requiring the plaintiff to furnish security on the ground that the plaintiff is a vexatious litigant and that there is no reasonable probability that the plaintiff will prevail. Requires the court to consider evidence at the hearing. Requires the court to dismiss the litigation with prejudice as to the defendant who moved for security if the plaintiff does not furnish the security. (Effective 5-20-93.)

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**Act 320**  
**Relating Time Sharing Plans,**  
**(H.B. 313, HD1, SD1, CD1)**

Requires plan manager of time sharing association to adopt an operating budget for each fiscal year and to distribute copies to all members of the association. Sets forth items to be covered in budget. Requires annual independent audit of the association's financial accounts by a public accountant. Requires a copy of the audit to be provided upon request to a director, member of the association, and any prospective purchaser. Extends repeal date of Chapter 514E to December 31, 1999. (Effective 6-22-93)

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**Act 282**  
**Relating to Cooperative Housing**  
**Corporations, (H.B. 690, HD1, SD1, CD1)**

Establishes a cooperative housing corporations law. Establishes governance provisions. (Effective 7-1-93.)

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**Act 350**  
**Relating to Financial Institutions;**  
**Recodification,**  
**(H.B. 1628, HD1, SD1, CD1)**

Act 350 recodifies the laws relating to financial institutions. Act 350 creates a new chapter 412 establishing a code of financial institutions to: (1) simplify, clarify, and modernize the laws concerning the regulation, organization, management, and activities of financial institutions in the State and (2) provide a comprehensive set of laws applicable to financial institutions. Cross-references to chapters 403, 406, 407, 408 and 410 in the condominium property regime statute have been changed to chapter 412, Hawaii Revised Statutes. (Effective 7-1-93.)

**The Legislative Aftermath of Iniki  
Act 339  
Relating to Insurance,  
(H.B. 1890, HD1, SD1, CD1)**

Due to the recent catastrophic property insurance losses throughout the world over the past five years along with Hurricane Andrew and Iniki, the commercial insurance market are unable or unwilling to insure against hurricane losses in Hawaii. The purpose of Act 339 is to establish the Hawaii hurricane relief fund. The fund will be used to assess the availability of insurance from all sources and be empowered to take steps to provide coverage should the private market prove unreliable.

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**Act 333  
Relating to Disaster Relief  
and Rehabilitation,  
(H.B. 1034, HD1, SD1, CD1)**

Act 333 was enacted to prohibit price increases in the rental or sale of essential commodities during a state disaster.

Specifically, this Act, among other provisions:

- Prohibits a landlord from terminating any tenancy for a residential dwelling unit in an area that is the subject of a disaster declaration or a severe weather warning, except for a breach of a material term of a rental agree-

ment or lease, or if the unit is deemed to be structurally unsafe. Requires the foregoing prohibitions to remain in effect until 24 hours after the severe weather warning is canceled by the National Weather Service; or in the event of a disaster declaration, until the declaration is altered, amended, revised, or revoked by the governor;

- Allows a landlord (in addition to a seller) to pass on to the consumer any additional operating expenses that are incurred because of a state disaster and which can be documented;
- Allows rent increases to take place pursuant to a written instrument, in the case of a residential dwelling unit, if the increases are contained in the written instrument which was signed by the tenant prior to the disaster declaration or severe weather warning;
- Prohibits a defendant, in any action against a merchant, landlord, or other business for violation of a price limitation, from being deemed to have violated the price limitation if the defendant proves that:
  - (1) the violation was unintentional;
  - (2) the defendant voluntarily rolled back prices to the appropriate level upon discovering that a price limitation was or may have been violated; and
  - (3) the defendant has instituted a restitution program for all consumers who may have paid excessive prices.(Effective 6-30-93.)

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## Do you have a condominium problem?

### Mediation may be the solution.

To support the condominium statute's emphasis on owner enforcement and association self-governance, the Real Estate Commission sponsors a mediation program to bring disputing parties together to discuss their condominium problems. The program is operated through the Neighborhood Justice Center and through Mediation Services of Maui. Specially selected mediators assist the parties in communicating about the issues, exploring possible solutions, and negotiating mutually acceptable settlements. Mediators do not impose solutions on parties to a dispute but try to help them reach their own solutions. If necessary, mediation services are provided on the Neighbor Islands.

Mediation is very effective in settling disputes before they escalate to the point of arbitration or litigation. Anyone with an unresolved complaint or claim involving the condominium's board, management, or residents (owners or tenants), may use the mediation service. Parties pay only a small filing fee to participate. For further information, call the Commission at 586-2646 (Toll free from the neighbor islands only: 1-800-468-4644, ask for ext. 62646) or:

**on Maui contact:**

Mediation Services of Maui, Inc.  
Cameron Center, 95 Mahalani Street  
Wailuku, Maui,  
Phone 244-5744.

**for all other islands contact:**

Neighborhood Justice Center  
200 North Vineyard Boulevard, Suite 320  
Honolulu, Hawaii  
Phone 521-6767.

**Mediation** *continued from page 1*

Areas of common concern included building maintenance, interpretation of bylaws and house rules, complaints about boards, and disputes over maintenance fees. Because mediations are confidential, specific details are not available. Under conflicts involving bylaws and house rules, were disputes surrounding an eviction, a noisy air conditioner, pets, use of common areas, and non-compliance with house rules.

Building maintenance disputes included repairs not done or done poorly, lost rental income due to damage from a sewer back-up, water damage to an individual apartment, conflicts over placement of a trash bin, repairs to an apartment interior, carpet damage, and the construction of a wall, either badly done, or done without permission.

Many complaints about boards involved their decision-making. Board members often fight among themselves, as seen in a mediation between a former

board member and the present board. Finally, there was mediation over a dispute between the resident manager of an association and the board.

Maintenance fee disputes are also common, with owners either upset at the amount of fees or the notice (or lack of it) given by the board. The Neighborhood Justice Center also mediated disputes between owners and boards over a delinquent maintenance fee with the possibility of foreclosure and a demand for reimbursement of maintenance fees.

The year 1992 also saw the start of a contract between the Commission and Mediation Services of Maui (MSM). Mediation Services of Maui provides mediation and dispute resolution services to Maui residents. Volunteer mediators receive forty-six hours of training in basic mediation skills. Those chosen for condominium disputes also receive twelve hours of specialized training in mediating condominium-related disputes.

**REAL ESTATE COMMISSION  
1993 CONDOMINIUM AND COOPERATIVE REVIEW COMMITTEE  
MEETING SCHEDULE\***

TIME	DATE	LOCATION
10:30 a.m.	September 16, 1993	Poipu, KAUAI Hyatt Regency Hotel Board Room
9:00 a.m.	October 6, 1993	HRH Princess Victoria Kamamalu Building 1010 Richards Street, Honolulu, Hawaii Kapuaiwa Room, 2nd Floor
9:00 a.m.	November 10, 1993	Kapuaiwa Room, 2nd Floor
9:00 a.m.	December 1, 1993	Kapuiwa Room, 2nd Floor

\*THIS SCHEDULE IS SUBJECT TO CHANGE. PLEASE RECONFIRM MEETING DATES, TIMES AND LOCATIONS WITH THE COMMISSION'S OFFICE (586-2643)

## Condominium Reserves Seminar

**Saturday, October 23, 1993**

**9:00 a.m. - 12:30 p.m.**

**Kauai Community College, Dining Room  
3-1901 Kaumualii Highway, Lihue, Kauai**

The Hawaii Real Estate Research and Education Center will present a seminar to provide information on the state law relating to "Mandatory Condominium Reserves" which went into effect on January 1, 1993. The seminar is designed to give Condominium Association boards, owners, managing agents and other interested parties, information and materials about the "how-to's of conducting and funding a condominium reserve study. Condominium Association Board Members and Managing Agents are encouraged to attend.

There is no fee for this seminar. A workbook will be provided to each participant. To assure that you will receive a workbook, please register by calling the Center by October 15, 1993.

**1-800-642-4756 Toll-free from the Neighbor Islands / 956-7892 on Oahu**

As announced in an earlier edition of this Bulletin (Summer 1992), the Hawaii Real Estate Research and Education Center has developed a **guide to condominium reserves** to assist condominium associations and their boards in preparing reserve studies. Each Registered Condominium Association and Registered Condominium Managing Agent (Company) is entitled to a complimentary copy. If your association or management company has not received your copy, please call the Center. Associations on Kauai can arrange to pick up their copy at the Seminar.